

RECEIVED

FEB 11 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Communications Assistance	)	CC Docket No. 97-213
for Law Enforcement Act	)	

**REPLY COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.**

Teleport Communications Group Inc. ("TCG") hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM") for implementation of the Communications Assistance for Law Enforcement Act ("CALEA").<sup>1</sup>

**I. INTRODUCTION**

TCG urges the Commission to adopt its proposal to permit small carriers the option to certify that they observe CALEA's policies and procedures, rather than file a separate statement outlining their security processes, procedures, and policies for individual review. The certification option is consistent with the three-pronged approach adopted by Congress and the Commission, which balances the interests of law enforcement, customer privacy, and the development of the telecommunications industry.<sup>2</sup>

---

<sup>1</sup> In the Matter of Communications Assistance for Law Enforcement Act, Notice for Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356 (rel. October 10, 1997).

<sup>2</sup> See id. at ¶ 5.

046

**II. THE COMMISSION'S PROPOSAL TO ALLOW A SMALL CARRIER THE OPTION TO CERTIFY THAT IT OBSERVES CALEA'S POLICIES AND PROCEDURES BEST BALANCES COMPETING INTERESTS WHILE MEETING STATUTORY REQUIREMENT**

Any implementation of CALEA should be measured against the three-prong balancing test set forth in the NPRM, and as directed by Congress. The Commission's proposal to permit a small carrier the option to merely certify that it observes policies, processes, and procedures, rather than submission of a separate statement of the policies, processes, and procedures used to comply with CALEA regulations, best satisfies the three-pronged criteria. First, to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; second, to protect privacy in light of powerful and personally revealing technology; third, to avoid impeding the development of new communications services and technologies.<sup>3</sup>

First, the certification option preserves the intent of having a narrowly focused capability for law enforcement execution of intercepts. The option to certify fulfills this intent by balancing the interests of law enforcement with a concern for smaller carriers. Neither certification of observing CALEA, nor the filing of procedures to determine observation, have an effect on authorized legal intercepts. It is the actual policies and procedures which assist law enforcement and these can be safeguarded without the extra burden of filing. Small carriers still must comply with the rules and regulations of CALEA and indeed have other

---

<sup>3</sup> Id.

incentives to do so.<sup>4</sup> The adherence to CALEA is the ultimate preservation of the interests of law enforcement authorities. The certification option merely relieves carriers, who collectively deliver less than 10 percent of the dialing equipment minutes each year, from submitting burdensome filing statements describing their security policies, processes, and procedures for individual review.<sup>5</sup>

Second, the certification option does not compromise consumer privacy. Small carriers already have internal customer privacy policies which address the Commission's concern for protecting privacy and these policies have been applied successfully to handle private policy concerns raised by law enforcement requests in the past. Furthermore, the possibility of forfeiture penalties and civil litigation is a deterrent for all carriers, including small carriers, from straying from proper customer privacy policy and procedure.<sup>6</sup> Therefore, the added burden of filing statements of every process, procedure, and policy for individual review, is superfluous and unnecessary to fulfill the statutory requirements.

Finally, the certification option avoids impeding the development of new communications services and technologies. The option alleviates undue administrative burdens for those smaller entities with limited resources to implement CALEA and is consistent with the Commission's stated intention not to

---

<sup>4</sup> Id. at ¶ 17 and n.6.

<sup>5</sup> NPRM at ¶ 35.

<sup>6</sup> Carriers that fail to observe CALEA may be subject to forfeiture penalties. See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. In addition, persons whose wire, oral, or electronic communications are wrongfully intercepted, disclosed, or intentionally used by a carrier may recover damages from that carrier in civil action. See 18 U.S.C. § 2520.

impose any unnecessary burdens upon those entities least able to meet them. This reduction in the burdens placed upon small carriers, by definition, will help avoid impeding the development of new communications services and technology by these carriers. Moreover, certification reduces the administrative burdens for the Commission as well.<sup>7</sup>

**III. PROPOSALS THAT A SMALLER CARRIER MUST FILE A SEPARATE STATEMENT DESCRIBING ITS SECURITY POLICIES, PROCESSES AND PROCEDURES TO THE COMMISSION FOR INDIVIDUAL REVIEW PLACE UNDUE AND UNNECESSARY BURDENS ON THE COMMISSION AND SMALL CARRIERS**

Some commenters make various arguments to support the erroneous view that smaller carriers should not have the option to option to certify that it meets CALEA statutory requirements. For example, some commenters contend that a smaller carrier has as much a responsibility as a larger one to ensure public safety and fulfill the purposes of CALEA by filing, rather than mere certification.<sup>8</sup> Other commenters argue that company revenues have nothing to do with CALEA and crime prevention via surveillance. All carriers, not just smaller carriers, should have the option of certification, and there is no statutory support, nor evidence of economic harm, which justify an option for solely smaller carriers.<sup>9</sup> Finally, another alternative offered by commenters is that geographic location of higher

---

<sup>7</sup> See TCG Comments at 9.

<sup>8</sup> See FBI at 32; Omnipoint at 7.

<sup>9</sup> BellSouth at 14-15; GTE at 10-11.

concentration of intercepts is the proper demarcation level to apply stringent or less stringent regulation.<sup>10</sup>

However, these commenters fail to recognize several key points which rebut their contentions. Primarily, all of their comments fail to acknowledge the overall framework of CALEA and its balancing policy. The Commission's certification option meets all the CALEA requirements in a manner that is at once least burdensome to those carriers most vulnerable to its regulations, while preserving the interests of privacy and law enforcement. Therefore, the argument that small carriers must file statements and records of their processes and procedures for individual review to preserve public safety and the integrity of electronic surveillance is not meritorious. Their arguments ignore the fact that smaller carriers are not only required by CALEA to meet its standards without filing,<sup>11</sup> but also have other non-CALEA based incentives, *i.e.*, administrative, civil, and even criminal litigation.

Commenters opposing asymmetrical regulation offer no compelling basis for their proposals. Indeed, the Commission previously has used indexed revenue threshold of \$100 million to determine a demarcation point for filing requirements between large and small carriers.<sup>12</sup> Furthermore, the \$100 million threshold is tailored to avoid impeding the development of new services and technologies with

---

<sup>10</sup> Ameritech at 6-7.

<sup>11</sup> NPRM at ¶¶ 17, 35.

<sup>12</sup> See 47 C.F.R. §§ 32.9000, 64.903 (using inflation-adjusted \$100 million annual revenue threshold to determine those carriers for which filing requirements for cost allocation manuals and ARMIS reports apply).

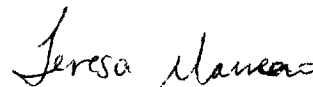
respect to small carriers. The Commission determined that smaller carriers, with smaller revenue, and emerging infrastructures, are less equipped than larger carriers to deal with the added administrative and financial burdens of filing. Alleviating these burdens avoids the impediment of new developments in services and technology, without compromising the other two interests of law and privacy.

#### IV. CONCLUSION

For the reasons stated herein, TCG urges the Commission to adopt its proposal to permit small carriers, under the \$100 million revenue demarcation point, the option to certify that they observe CALEA's policies and procedures, rather than file a separate statement for individual review outlining their security processes, procedures, and policies.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.



---

Teresa Marrero  
Senior Regulatory Counsel - Federal  
Two Teleport Drive  
Staten Island, N.Y. 10311  
(718) 355-2939

Its Attorney

Dated: February 11, 1998

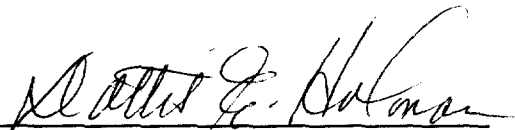
CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Reply Comments was sent by hand-delivery this 11th day of February, 1998, to the following:

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W., Room 222  
Washington, D.C. 20554

Judy Boley  
Federal Communications Commission  
1919 M St., N.W., Room 234  
Washington, D.C. 20554

ITS  
1231 20th Street, N.W., Rm. 102  
Washington, D.C. 20037

  
Dottie E. Holman